

CONTRACT NO. SC-COR-1900064

THIS AGREEMENT, made and entered into on APR 22 2019, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation existing under and by virtue of the laws of the State of Hawaii, with offices at Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter called the "CITY," and FARELLA BRAUN & MARTEL LLP, whose principal place of business is 235 Montgomery Street, San Francisco, California 94104, hereinafter called the "CONSULTANT."

WITNESSETH THAT:

WHEREAS, the CITY desires to engage the CONSULTANT to render legal consultation services for the City in matters involving criminal law; and

WHEREAS, the services required are technical and professional in nature and CITY personnel are not able to provide these services; and

WHEREAS, the CONSULTANT was selected pursuant to section 103D-304, Hawaii Revised Statutes (HRS) and the related Hawaii Administrative Rules (HAR), relating to the procurement of professional services; and

WHEREAS, this is a time and materials contract and subject to the General Terms and Conditions, the compensation of the CONSULTANT shall be the amount stated in Appendix C: Pricing/Certifications. Any funds remaining at the end of this AGREEMENT shall revert back to the CITY; and

WHEREAS, the CONSULTANT is willing and able to provide the services set forth in this AGREEMENT;

NOW, THEREFORE, the CITY and CONSULTANT, in consideration of the foregoing and of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound, hereby mutually agree as follows:

1. This Contract and the following documents, appendices and exhibits collectively form the "AGREEMENT" or "Contract Documents", all of which are attached hereto and incorporated herein:

This Contract

Appendix A: Scope of Work

Appendix B: Term/Schedule of Work

Appendix C: Pricing/Certifications

Appendix D: Special Provisions

Appendix E: General Terms and Conditions

The Contract Documents as listed hereinabove are in the order of controlling preference should there be any conflict in the terms of the Contract Documents.

2. The CONSULTANT shall perform and complete in a professional manner all of the services required under Appendix A: Scope of Work and this AGREEMENT. The CONSULTANT shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the work contemplated under Appendix A: Scope of Work and this AGREEMENT.

3. The CONSULTANT agrees to perform all services indicated in the AGREEMENT until completed to the CITY's satisfaction.

It is hereby agreed by and between the parties hereto that the sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) is established as the maximum payable under this AGREEMENT and is subject to Appendix C: Pricing/Certifications, Appendix D: Special Provisions and Appendix E: General Terms and Conditions, including the provisions thereof relating to reducing or increasing the compensation of the CONSULTANT.

4. The term of the AGREEMENT shall be provided in Appendix B: Term/Schedule of Work.

5. The CONSULTANT will perform said work in an efficient manner so as entirely to complete and perform said work within the time set forth in Appendix B: Term/Schedule of Work.

6. By signing below, the CONSULTANT hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, HAR, and submitted pursuant to Section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this AGREEMENT, is accurate, complete and current as of the date of this AGREEMENT. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and the CITY which are part of the CONSULTANT's proposal.

7. When notice is to be given to the CITY it shall be mailed or delivered to:

Mr. Paul Aoki
Corporation Counsel/Officer-in-Charge
City and County of Honolulu
Department of the Corporation Counsel
530 South King Street, Room 110
Honolulu, Hawaii 96813

8. When notice is to be given to the CONSULTANT it shall be mailed or delivered to:

Ms. Jessica K. Nall
Partner
Farella Braun & Martel LLP
235 Montgomery Street
San Francisco, California 94104

From BFS - 74
(Mar. 1996)

Certificate

The attached contract for consultant services to render legal
consultation services for the City in matters involving criminal Law

\$150,000.00

Is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds are available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. SC-COR-1900064


FUND General Fund (110)

ACCOUNT NO. 110/0500-19 (3015)

HONOLULU, HAWAII



DATE: APR 22 2019




 Director of Budget & Fiscal Services

MA


IN WITNESS WHEREOF, this AGREEMENT is executed herein by the duly authorized officers or agents of the CITY and the CONSULTANT.

CITY AND COUNTY OF HONOLULU	FARELLA BRAUN & MARTEL LLP
BY: 	BY: 
PRINTED NAME: NELSON H. KOYANAGI, JR.	PRINTED NAME: Jessica Wall
TITLE: Director, Department of Budget and Fiscal Services	TITLE: Partner
DATE: APR 22 2019	DATE: April 11, 2019

APPROVED AS TO FORM AND LEGALITY


Deputy Corporation Counsel
City and County of Honolulu

APPROVAL RECOMMENDED


Paul S. Aoki, Acting Corporation Counsel
Department of the Corporation Counsel



CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

)

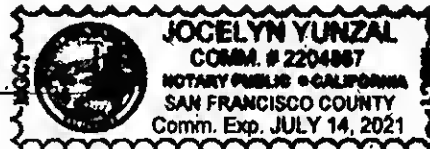
County of San Francisco)

On April 11, 2019, before me, Jocelyn Yunzal, Notary Public, personally appeared Jessica Nall, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person acted, executed the instrument.

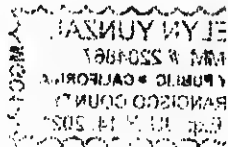
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jocelyn Yunzal
Signature of Notary Public



(Notary Seal)



APPENDIX A: SCOPE OF WORK

1. PROJECT TITLE

The rendering of legal services to the CITY in the form of preparation, advice, counsel, research, drafting, evaluation, opinions and consultation on behalf of the CITY pertaining to factual and legal issues arising out of any criminal matters and issues involving the CITY.

The Project may include legal representation as a Special Deputy or Special Deputy Corporation Counsel at the written request of the CITY.

2. SERVICES

Tasks/Deliverables

The scope of services shall include, but is not limited to, reviewing documents and records; interviewing witnesses; conducting research; rendering opinions including evaluations reports, and investigations; preparing pleadings, discovery documents and other documents; preparing reports and consulting with members of the Department of the Corporation Counsel; court appearances; communicating with opposing counsel; and assistance with negotiations related to factual and legal issues arising out of any criminal matters and issues involving the CITY.

Services as a Special Deputy and Special Deputy Corporation Counsel to represent the CITY in legal proceedings may be included upon written request by the CITY and appointment as a Special Deputy.

3. COOPERATION

The CONSULTANT shall cooperate and coordinate with other CONSULTANTS who may be employed by the CITY on the same or related projects of the CITY, and to the extent possible, shall avoid interference therewith, and shall cooperate with the other CONSULTANTS so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict, which may arise between the CONSULTANT and the other CONSULTANTS of the CITY, shall be resolved by the Officer-in-Charge, whose decision shall be final and binding.

4. CONFIDENTIALITY

When dealing with the news media, the CONSULTANT is expected to be circumspect and to treat all matters falling within the scope of this Contract with the utmost confidentiality. In cases other than where the CONSULTANT is legally and ethically precluded from conferring or consulting with the Department of the Corporation Counsel, the CONSULTANT shall consult with and/or obtain the consent of the Officer-in-Charge prior to having conversations with or giving public interviews to the news media or any other members of the public.

APPENDIX B: TERM/SCHEDULE OF WORK

1. TIME

January 22, 2019 through February 14, 2022

2. PERFORMANCE OF SERVICES

The CONSULTANT shall begin performance of services on the date of execution and shall continue to provide the services in a timely manner until February 14, 2022.

The AGREEMENT may be extended by mutual agreement of the CITY and the CONSULTANT should the need for such extension arise. In the event this AGREEMENT is extended for any reason, the maximum hourly billing rate the CONSULTANT may charge the CITY shall remain as set forth in Appendix C: Pricing/Certifications, Project Payment Schedule, Paragraph C, for all services rendered by the CONSULTANT as described in the scope of services of this AGREEMENT in Appendix A: Scope of Work, Paragraph 2, Services, herein. Any extension of this AGREEMENT shall be subject to availability of funds.

APPENDIX C: PRICING/CERTIFICATIONS

1. PROJECT PAYMENT SCHEDULE

- A. All of CONSULTANT's bills must provide an itemized statement of specific services rendered with each service described separately and with the date performed, together with the total number of hours billed for the specific services at one-tenth of an hour, the hourly rate of each billing attorney, paralegal, or investigator, and identified costs and fees charged against the CITY's account. The CONSULTANT shall be paid or reimbursed only for allowable reasonable and necessary fees and costs as are actually incurred and supported by accounting records, appropriate receipts, expense accounts, and other invoices.

Charges for cost items including, but not limited to, long distance phone calls, conference call services, video conferencing, delivery charges, transcripts, duplication costs, postage, filing fees, and recording fees may be charged to the CITY.

- B. The CONSULTANT may submit monthly to the CITY its vouchers and/or bills for the fees and costs under Appendix C: Pricing/Certifications, Section 1(A). All such vouchers and/or bills must bear the written approval of the CITY before being paid in accordance with Hawaii Revised Statutes, Section 103-10. The CONSULTANT'S monthly statement must be reviewed and approved for payment by the Officer-In-Charge before any payments may be made by the CITY.
- C. The maximum hourly billing rate the CONSULTANT may charge the CITY for legal consultant services and Special Deputy or Special Corporation Counsel services is \$700.00 per hour for Partner Douglas Young, \$500.00 per hour for Attorneys Jessica Nall, Aviva Gilbert, and Claire Johnson, \$500.00 per hour for additional associates, and \$350.00 per hour for paralegals for preparation, research, and representation in court together with reasonable costs incurred in connection with the Project.
- D. The initial maximum amount the CONSULTANT may charge the CITY for the Project shall be ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00). However, because the parties recognize that the total cost for the Project depends on future events and cannot be accurately determined at this time, the initial maximum amount may be increased by the CITY. If the CONSULTANT determines that the work of an attorney other than Douglas Young, Jessica Nall, Aviva Gilbert, or Claire Johnson is required for work under this AGREEMENT, the CONSULTANT shall obtain written consent from the Officer-In-Charge prior to the attorney performing any work under this AGREEMENT.
- E. Pursuant to the mandate of Section 2-26.7 of the Revised Ordinances of Honolulu 1990 (Added by Ord. 94-27), which sets forth that reasonable fees billed to the city by private attorneys shall be paid at the rates specified herein; except, where the fees billed, exclusive of court costs and out-of-pocket expenses, exceed the following amounts, the hourly rates payable to each attorney or category of attorneys specified in the written contract referred to in

Sec. 2-26.3 and any special hourly rates specified in said contract shall be reduced by the following percentages and applied to fees billed in excess of the threshold amounts:

- (1) Where fees billed exceed \$100,000.00, the hourly rates shall be reduced by five percent.
- (2) Where fees billed exceed \$300,000.00, the hourly rates shall be reduced by 10 percent.
- (3) Where fees billed exceed \$500,000.00, the hourly rates shall be reduced by 20 percent.
- (4) Where fees billed exceed \$750,000.00, the hourly rates shall be reduced by 25 percent.
- (5) Where fees billed exceed \$1,000,000.00, the hourly rates shall be reduced by 30 percent.

F. In the event it becomes evident to the CONSULTANT that the initial funding or any other funding approved by the CITY will be insufficient to cover projected costs of future legal services, it shall be the responsibility of the CONSULTANT to bring this matter to the attention of the Officer-In-Charge as soon as possible. If additional funding is required, the CONSULTANT shall provide written justification for the recommended amount of funding to the Officer-In-Charge. The Officer-In-Charge is not bound or obligated in any manner to accept the recommendation of the CONSULTANT.

G. The CONSULTANT shall inform the Officer-in-Charge when the CONSULTANT'S bill has reached SEVENTY FIVE PERCENT (75%) of the initial maximum amount of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00). Along with informing the Officer-in-Charge that the work has exceeded SEVENTY FIVE PERCENT (75%) of the initial maximum amount, the CONSULTANT shall submit in writing a detailed budget covering the remaining services. The CONSULTANT shall be responsible for insuring that consultant fees for services rendered do not exceed the contract amount.

H. The CONSULTANT agrees to staff the Project in such a manner so as to assure reasonable expenses consistent with providing the highest quality services. The CONSULTANT shall use its best efforts to insure that expenses incurred and charged to the CITY are reasonable and not duplicative.

2. BILLING PROTOCOL

The Department of the Corporation Counsel of the City and County of Honolulu has adopted the following billing protocol. You and/or your firm will be required to comply with this protocol. If you have questions concerning it, please contact the Officer-in-Charge for clarification. In the event you wish to negotiate changes due to the internal operation of your firm, please raise them in writing. Any changes to this protocol will need prior, written approval from the Officer-In-Charge or her representative. This protocol is to be used in conjunction with any new proposal for services.

- A. All billing shall be done in .10-hour increments.
- B. Monthly status reports must be submitted at the end of each calendar month and must include expected future costs, expenses, projected fees, and a brief summary of activity on each case. Subsequent summaries must indicate any relevant changes or developments that may have occurred during the month.
- C. Monthly billings should be submitted by the last day of each month for the work performed during the previous month. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the case. If the totals cannot be produced by your computerized billing system, please provide them with the billing under separate cover, listing totals to date.
- D. You and/or your firm were hired for your individual skills and experience. The CITY looks forward to you handling this matter personally. The CITY may authorize other individuals, usually an associate, to handle this case, with the CITY's prior permission.
- E. The CITY recognizes your need to train new employees; however, as a public entity, the CITY cannot afford to pay for training. New employees can be used, with prior approval, and only when it will be beneficial or cost-effective for the CITY.
- F. The CITY needs to know your photocopying charges on a per-copy basis. The maximum charge is \$.25 per copy. The CITY encourages you to use outside copying services if the cost of doing so is less than what your firm would charge.
- G. The CITY needs to know your incoming and outgoing fax charges. Fax charges should be \$.25 or less per page. Please use the United States Postal Service, Federal Express mail or a similar service if it would be cheaper than faxing via your system.
- H. Charges in excess of actual costs are not permitted. The CITY does not allow cost, plus a percentage, for actual outside costs.
- I. The CITY does not allow "double billing". If you are working on another client's matter, do not bill the CITY for the time. This applies to travel time or any other matter.
- J. Your billings should identify each employee working on the matter. Each entry should delineate who has done the work via name, initials or some other method.
- K. Telephone, cellular telephone, and postage charges are billable at actual cost.
- L. The CITY does not pay for secretarial time or secretarial overtime. The CITY does not pay for secretarial tasks or tasks that should be subsumed into your overhead, such as time spent faxing, mailing, arranging for messengers or calendaring.

- M. The CITY does not pay for billing or discussion of bills. If the CITY has questions about billing or needs additional information on a bill that is not a chargeable event, you should respond without charging the CITY for that time.
- N. Please provide copies of all written research prepared on the CITY's cases or matters.
- O. Unless previously requested, it is not necessary to send drafts or miscellaneous correspondence; however, significant pieces of correspondence should be copied to the CITY.
- P. The CITY has retained you because of your experience. Do not charge the CITY for work you have done and billed another client for in the past. This also applies to forms.
- Q. Billing entries should be by date and task. For example, if four (4) distinct tasks were done on a file in one day, the tasks should be billed separately with an individual time charge for each task.

APPENDIX D: SPECIAL PROVISIONS

1. TERMINATION

In the event of termination of this Agreement by either or both parties, the CONSULTANT shall transmit the case file, including all pleadings, correspondence, discovery, and research to the Officer-in-Charge and/or her designee within seven (7) calendar days of the date of termination.

2. OWNERSHIP OF WORK PRODUCT

All documents or other information developed or received by CONSULTANT while in performance of the services relating to the Project are the property of the CITY. CONSULTANT shall provide the CITY with copies of these items upon demand or upon termination of this agreement. CONSULTANT is not authorized to use non-public information or materials generated in this case for general use or for other cases.

3. CONTRACTOR

In this Agreement, the term CONTRACTOR may be used in place of CONSULTANT to be consistent with the General Terms and Conditions and shall have the same meaning as CONSULTANT.

4. AUDIT AND INSPECTION OF RECORDS

Delete Section 2.21, Audit and Inspection of Records, of the General Terms and Conditions (02/01/2015) for the City and County of Honolulu and, in lieu thereof, insert:

"CONSULTANT agrees to maintain and make available to the CITY, during regular business hours, accurate books and accounting records, relating to its work under this Contract. CONSULTANT will permit the CITY to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, records or personnel and other data related to all other matters covered by this Contract. CONSULTANT shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Contract or until after final audit has been resolved, whichever is later. The CITY acknowledges that the documents and records presented for inspection may be CONSULTANT's confidential information."

5. QUALITY OF GOODS AND SERVICES

Delete the second paragraph of Section 2.9 of the General Terms and Conditions (02/01/2015) for the City and County of Honolulu and, in lieu thereof, insert:

Unless otherwise specified, any services required by the bid solicitation or contract must be performed in a good and workpersonlike manner by a person who has the knowledge, training, or experience necessary for the successful practice of a trade or

occupation, in a proficient manner, and in accordance with generally accepted professional standards.

6. CONTRACT PERFORMANCE AND PAYMENT BONDS

Section 2.23 of the General Terms and Conditions (02/01/2015) for the City and County of Honolulu is deleted in its entirety.

7. RETAINAGE

Section 2.27 of the General Terms and Conditions (02/01/2015) for the City and County of Honolulu is deleted in its entirety.

8. INSURANCE

With respect to Section 2.26 ("Insurance") of the General Terms and Conditions, it is understood that the Legal Professional Liability ("LPL") insurance of the CONTRACTOR does not use Cross Liability endorsements (2.26(2)(B)) and is written on a Claims Made and Reported basis instead of an "Occurrence" form of policy (2.26(2)(D)). Further, the CONTRACTOR will not add the City as an additional insured for its LPL Insurance (2.26(3)(C)). Further, the LPL policies of the CONTRACTOR are not project-specific, and therefore the CONTRACTOR will not provide a certificate that shows the project name or contract number, but rather will provide only a general certificate (2.26(3)(B)).

9. SEXUAL HARASSMENT

With respect to section 2.15 ("Sexual Harassment Policy for Employer Having Contract with the City") of the General Terms and Conditions, it is understood that the CONTRACTOR has a written Anti-Harassment Policy as required by this Section, and that the CONTRACTOR is in compliance with California anti-harassment law. In compliance with California law, the firm requires two hours of live training on sexual harassment issues for all management and supervisors on a bi-annual basis. All firm management and all firm employees will receive sexual harassment training at a live presentation in 2019.

APPENDIX E: GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS FOR THE CITY AND COUNTY OF HONOLULU dated 2/1/15.

The General Terms and Conditions (GTC) for the City and County of Honolulu dated 2/1/15 shall apply. If not physically attached, it shall be incorporated by reference herein and referred to as the "General Conditions." Copies may be obtained online at www.honolulu.gov/pur; click on the link titled: "Instructions, Terms & Conditions".